

21 C.J.S. Courts § 263

Corpus Juris Secundum | May 2023 Update

Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

2. Transfer of Cases

a. In General

§ 263. Transfer between appellate courts

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West's Key Number Digest

West's Key Number Digest, [Courts](#)  484, 485, 487(1)

Where the court to which a case is appealed, whether the court of last resort or a subordinate appellate court, has no jurisdiction, it may of its own motion transfer the appeal to the other appellate court having jurisdiction.

Where the court to which a case is appealed, whether the court of last resort or a subordinate appellate court, has no jurisdiction, it may of its own motion transfer the appeal to the other appellate court having jurisdiction, pursuant to rules so providing.¹ Accordingly, if an appellant erroneously designates the court to which an appeal is taken in his or her notice of appeal, the appellate court to which the appeal is taken should transfer the case to the proper court² rather than strike the appeal.³

Where the transfer of a case from a subordinate appellate court is granted by the court of last resort in order that the higher court may address only one of several issues addressed by the subordinate appellate court, the court of last resort in essence partially denies a transfer on those issues.⁴ In certifying a case for immediate transfer to the court of last resort, a subordinate court of appeals is not permitted to add issues to the certification which were not present in the case before it.⁵ Additionally, on transfer to a court of last resort, the appellants may not add new claims.⁶ However, the court of last resort may grant certification on an issue not expressly raised in the petition for certification.⁷

"Deflection" to subordinate appellate court.

Under a statute expressly so permitting, a court of last resort may grant a subordinate appellate court jurisdiction over a case that the court of last resort transfers or "deflects" to that court.⁸ Such a statute does not give the court of last resort and the subordinate court concurrent jurisdiction since the subordinate court does not have jurisdiction unless and until the court of last resort transfers or deflects an appeal to it.⁹

The transfer or "deflection" of a case from a court of last resort to a subordinate appellate court does not represent the higher court's determination that no constitutional issue in the case has merit.¹⁰ Rather, the issue may be one not within the higher court's exclusive jurisdiction, or the constitutional issue may already have been resolved by the higher court, or the constitutional issue asserted on appeal may not have been raised in and ruled upon by the subordinate appellate court.¹¹

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Footnotes

1 Pa.—*Com. v. Carter*, 36 Pa. Commw. 569, 389 A.2d 241 (1978).

2 Ala.—*Ex parte R.B.Z.*, 725 So. 2d 257 (Ala. 1997).

3 Pa.—*Com. v. Carter*, 36 Pa. Commw. 569, 389 A.2d 241 (1978).

4 Ind.—*Martin v. Amoco Oil Co.*, 696 N.E.2d 383 (Ind. 1998).

5 Utah—*State v. Redd*, 1999 UT 108, 992 P.2d 986 (Utah 1999).

6 Mo.—*Dupree v. Zenith Goldline Pharmaceuticals, Inc.*, 63 S.W.3d 220 (Mo. 2002).

Equal protection

Because petitioners had not developed their equal protection argument on interlocutory transfer without a ruling from the superior court, the supreme court would not address it substantively.

- 7 N.H.—*Allen v. State*, 147 N.H. 243, 785 A.2d 901, 160 Ed. Law Rep. 153 (2001).
- 8 Conn.—*Shew v. Freedom of Information Com'n*, 245 Conn. 149, 714 A.2d 664 (1998).
- 9 Ala.—*Ex parte R.B.Z.*, 725 So. 2d 257 (Ala. 1997).
- 10 Ala.—*Ex parte R.B.Z.*, 725 So. 2d 257 (Ala. 1997).
- 11 Ga.—*Atlanta Independent School System v. Lane*, 266 Ga. 657, 469 S.E.2d 22, 108 Ed. Law Rep. 1297 (1996).

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